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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jon S. Tigar, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 19-00489-JST
)	
OLEG TINKOV,)	
)	
Defendant.)	
_____)	

Oakland, California
Friday, October 29, 2021

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

OFFICE OF THE UNITED STATES ATTORNEY
1301 Clay Street
Oakland, CA 94612

BY: MICHELLE KANE
ASSISTANT UNITED STATES ATTORNEY

For Defendant:

CLIFFORD CHANCE US LLP
31 West 52nd Street
New York, NY 10019

BY: CHRISTOPHER J. MORVILLO, ESQUIRE
IVANA DJAK, ESQUIRE

RAMSEY & EHRLICH LLP
803 Hearst Avenue
Berkeley, CA 94710

BY: ISMAIL RAMSEY, ESQUIRE

Reported By: Pamela Batalo-Hebel, CSR No. 3953, RMR, FCRR
Official Reporter

APPEARANCES CONTINUED:

For Defendant:

MORVILLO ABRAMOWITZ GRAND IASON
ANELLO P.C.
565 Fifth Avenue
New York, NY 10017

BY: JEREMY TEMKIN, ESQUIRE

Also Present:

**KYLE POLLACK,
UNITED STATES PROBATION OFFICER**

Friday - October 29, 2021

9:36 a.m.

P R O C E E D I N G S

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THE CLERK: Your Honor, now calling CR 19-489, United States vs. Oleg Tinkov.

If counsel could please state their appearances, for the record, starting with the government.

MS. KANE: Good morning, Your Honor. Michelle Kane for the United States. Also appearing for the United States is Peter Anthony of the Tax Division. I don't think he's been promoted yet, if you see him there. Thank you so much.

MR. MORVILLO: Good morning, Your Honor. Christopher Morvillo for Mr. Tinkov, who is seated beside me here in London. With me on video here for Mr. Tinkov is Ivana Djak, Isie Ramsey, and Jeremy Temkin.

THE PROBATION OFFICER: Good morning, Your Honor. Kyle Pollak for U.S. Probation.

THE COURT: Very good. Good morning to all of you. This is a continuation of a sentencing that we started previously. Let me start by asking Mr. Morvillo whether Mr. Tinkov consents to proceed by video this morning?

MR. MORVILLO: He does, Your Honor.

THE COURT: We are going to proceed by video. It's in the interests of justice that we do that, for two reasons. The first is that the COVID-19 pandemic is still ongoing and it is

1 still resulting in hospitalizations and fatalities and it is
2 simply not possible for the Court to conduct the majority of
3 its business in person without unnecessary risk to the parties,
4 their lawyers, the Court, court staff, and the general public.

5 Also Mr. Tinkov is located in London, as we will discuss
6 in just a moment. He is gravely ill. He is contesting
7 extradition on that basis, and so in its current posture, the
8 Court -- it was unable to conduct this proceeding in person, so
9 for both of those reasons, I find that it's in the interests of
10 justice to proceed by video, and that's what we're going to do.

11 We did make something of a record last time already about
12 the parties' Plea Agreement and Mr. Tinkov's circumstances.
13 What I would like to do this morning is give counsel for the
14 Government an opportunity to say anything further that they
15 want -- well, let me back up -- for me to place on the record
16 what materials I reviewed in connection with this morning's
17 hearing so that there is a clear record of those, to give the
18 Government an opportunity to say anything additional that it
19 wants, to give Defense counsel an opportunity to say anything
20 additional they want, to give Mr. Tinkov one last opportunity
21 to address the Court, to determine whether to accept the
22 parties' Plea Agreement pursuant to Rule 11(c)(1)(C), and
23 assuming that I accept the agreement, to then impose sentence.

24 So first things first. I have reviewed again the Plea
25 Agreement, the Sentencing Memorandum submitted by the

1 United States, the Sentencing Memorandum more recently
2 submitted by the Defendant, and the modified Presentence Report
3 submitted by Probation that I requested at the last hearing of
4 the case. I'm ready to proceed this morning.

5 Ms. Kane, would the Government like to say anything
6 further in support of its recommended disposition?

7 **MS. KANE:** Thank you, Your Honor.

8 I would just reiterate that this is an incredibly unique
9 circumstance in this particular case given the characteristics
10 of the Defendant as has been described in the papers submitted
11 to the Court, and that given those unique circumstances, we do
12 urge the Court to accept the Plea Agreement that the parties
13 have proposed.

14 **THE COURT:** Very good.

15 Mr. Morvillo, anything further on behalf of the Defendant?

16 **MR. MORVILLO:** Yes, Your Honor. I would like to
17 speak, if I might.

18 Mr. Tinkov, first of all, as the Court may be aware, is
19 suffering from Graft-Vs-Host Disease which affects his eyes,
20 and it's hard for him to look at the screen. He's also not
21 feeling particularly well today, and so my understanding is
22 that he would like me to speak on his behalf as well, and so
23 I'm going to do that as well.

24 **THE COURT:** That's fine.

25 **MR. MORVILLO:** Thank you, Your Honor.

1 At the time of the plea a few weeks ago, Your Honor
2 observed that the requested leniency in this case due to
3 Mr. Tinkov's medical condition exceeds the record supporting
4 such requests in all other cases the Court has previously
5 encountered, and I have to say that in my 30 years of practice,
6 I fully share that sentiment. In fact, it is somewhat ironic
7 that I probably have far more to say in connection with this
8 sentencing than any other that I have appeared for in my
9 career, but under circumstances which so clearly speak for
10 themselves, less is probably warranted, and so in that spirit,
11 I will be appropriately brief.

12 For most people, fighting acute myeloid leukemia would be
13 the greatest challenge of a lifetime and more than many could
14 handle, but as this Court is aware, since February of 2020,
15 Oleg has been facing the charges in this case, and as this
16 Court certainly knows, in any circumstance, confronting an
17 indictment is an extremely difficult and stressful challenge.
18 Indeed, short of a terminal illness, it is one of the most
19 harrowing and stressful experiences that a person can face.

20 Mr. Tinkov, of course, faced both of these life-altering
21 challenges simultaneously, and, frankly, it's nothing short of
22 a miracle that he is sitting before the Court here today
23 awaiting Your Honor's judgment.

24 The fact that he is here today tells you more about this
25 man that I have the words to convey, but I will try to

1 summarize it for you very briefly.

2 The man that I've gotten to know over the past 18 months
3 or so is perhaps counterintuitively one of the most optimistic
4 people that I have ever met. Throughout this entire horrific
5 period, there has always been a vibrant light of hope that has
6 emanated from Oleg. I think that is very likely the result of
7 the daily conversation that he has with his own mortality that
8 makes him appreciate every day and every moment, to find joy in
9 life's simple pleasures and the quiet time with his loving and
10 supportive family, which is lovingly reflected in the letters
11 before the Court.

12 Following the plea a few weeks ago, Oleg and I took a walk
13 in a park in London, and I asked him how he felt now that his
14 case was nearing this resolution, and he said something to me
15 that I will never forget. He said that he feels like a bird in
16 a cage who is afraid to fly out even though the door has been
17 opened. And as I reflected on that rather poetic simile, it is
18 apparent to me that in part, it is due to the fact that he's
19 been living in a cage within a cage, and while the door from
20 this case may soon be open, the door to freedom from his cancer
21 is still years away.

22 Nevertheless, while the end of his battle with cancer is
23 far from over, Oleg lives his life now day to day, one day at a
24 time. I know how relieved he is to be standing here at the
25 conclusion of this epic challenge. He is extremely grateful to

1 the Government to finally resolve this case as it has and to
2 the Court for its compassionate response to our application for
3 leniency here.

4 He is also very sorry for the conduct that led to this
5 case, and with that, I would simply implore the Court based on
6 these circumstances to accept the parties' agreement and impose
7 the requested sentence.

8 **THE COURT:** Thank you, Mr. Morvillo.

9 And I gather from your remarks, that although normally I
10 would ask Mr. Tinkov if he wants to allocute, that you have now
11 spoken on his behalf; is that correct?

12 **THE DEFENDANT:** Your Honor, I can just say I'm very
13 sorry.

14 **THE COURT:** Thank you, Mr. Tinkov.

15 Well, I am required to first consider the sentencing
16 guidelines and then to consider the factors set forth under
17 Section 3553(a).

18 I start by agreeing with and adopting the sentencing
19 guidelines calculations set forth in the parties' Plea
20 Agreement. Mr. Tinkov's total adjusted offense level is 29.
21 According to the modified Presentence Report, the Defendant has
22 no criminal history, and I'm not aware of any other information
23 on that topic, and so I therefore place him in Criminal History
24 Category 1, which produces a guidelines range of between 87 and
25 109 months.

1 Pursuant to the Plea Agreement submitted in conformity
2 with the Federal Rules of Civil Procedure -- excuse me -- with
3 Federal Rule of Civil Procedure 11(c)(1)(C), the United States
4 and Defendant are jointly requesting a sentence of time served,
5 a fine of \$250,000, and one year of supervised release to be
6 served outside the United States.

7 In the Plea Agreement, Mr. Tinkov has also agreed to pay
8 no less than \$506,828,377. This includes 448,009 -- excuse
9 me -- \$448,957,108 in restitution comprised of \$248,525,339 in
10 taxes, statutory interest on that tax, and nearly \$100 million
11 fraud penalty.

12 He has also agreed to pay tax liabilities, interest, and
13 additional penalties for other years that he acknowledges that
14 he owes.

15 He has already satisfied his monetary obligations under
16 the Plea Agreement by previously paying prior to this hearing
17 to the United States \$508,954,076.

18 The Probation Office has not provided a sentencing
19 recommendation. I didn't ask them for one.

20 I have considered the sentencing guidelines, but I've also
21 considered the factors set forth in Title 18 United States Code
22 Section 3553(a). That statute sets forth several factors that
23 I must consider in determining a just sentence: The nature and
24 circumstances of the offense, and the Defendant's history and
25 characteristics, the purposes of sentencing, the kinds of

1 sentences available, the guidelines range for sentences, any
2 pertinent policy statements, and the need to avoid unwanted
3 sentencing disparities.

4 Of particular relevance here are the nature and
5 circumstances of the offense and the Defendant's history and
6 characteristics.

7 The offense is obviously quite serious. It's a financial
8 crime of extraordinary magnitude. That's the character of the
9 offense itself, but I want to make two findings.

10 First, I find that the offense was aberrant behavior for
11 this defendant. In light of the magnitude of the crime, that
12 by itself would not be sufficient for the Court not to impose a
13 custodial sentence.

14 Second, and much more importantly, however, I find that a
15 non-custodial sentence is appropriate in light of the
16 Defendant's grave medical condition. Mr. Tinkov is located in
17 the United Kingdom where he was arrested on February 26th of
18 last year. The United States sought extradition to the
19 United States, which Mr. Tinkov fought on medical grounds and
20 which to this date the United States has not been successful in
21 obtaining.

22 In late 2019, Mr. Tinkov had been diagnosed with acute
23 myeloid leukemia, which is a form of blood cancer. After a
24 stem cell transplant in late 2020, he developed chronic
25 Graft-Vs-Host Disease, GVHD, which requires that he take

1 medications that substantially compromise his immune system.
2 His body is essentially fighting with itself.

3 In July 2021, Mr. Tinkov was examined by experts retained
4 by both Mr. Tinkov and the United Kingdom authorities who were
5 representing the interests of United States law enforcement in
6 the extradition proceeding. Those experts estimated -- excuse
7 me -- those experts concluded that Mr. Tinkov's one- and
8 two-year survival rate was very low. They estimated that
9 Mr. Tinkov has a 30- to 40-percent chance of surviving one
10 year, a 30- to 35-percent chance of surviving two years, and a
11 10- to 30-percent chance of surviving five years.

12 They also concluded, including the Crown's expert, that
13 Mr. Tinkov is highly susceptible to life-threatening infections
14 complicated by the ongoing COVID-19 pandemic, which was ongoing
15 at the time of Mr. Tinkov's examination and which continues to
16 be ongoing as of the date of this sentencing.

17 As of July of this year, the experts agreed that it would
18 be at least one year before it would be medically safe for
19 Mr. Tinkov to travel to the United States for this case and
20 that he might never be able to do so.

21 In light of these facts, two conclusions emerge. First,
22 in light of the Defendant's medical condition, it is not clear
23 when a contested criminal proceeding in the United States could
24 take place, if it ever could. The parties' proposed Plea
25 Agreement solves that problem. I don't think that

1 consideration fits neatly within the 3553(a) factors, but it
2 seems appropriate for the Court to consider it in determining
3 whether to accept the Plea Agreement.

4 Second, even if Mr. Tinkov were within the territorial
5 boundaries of the United States or waived extradition, this
6 Court would not impose a custodial sentence because on the
7 undisputed information that has been made available to the
8 Court, including expert opinions provided by persons retained
9 at least indirectly by the United States, Mr. Tinkov would be
10 more likely than not to die in prison, regardless of the length
11 of a custodial sentence that the Court were to impose. This is
12 without doubt a very serious case, but it does not merit a life
13 sentence.

14 Accordingly, the Court accepts the parties' Plea Agreement
15 pursuant to Rule 11(c)(1)(C), and I will now impose sentence.

16 Pursuant to the Sentencing Reform Act of 1984, Mr. Tinkov,
17 it is my judgment that you are hereby committed to the custody
18 of the Bureau of Prisons to be imprisoned for a term of time
19 served. That means you've already served your sentence.

20 You shall be placed on supervised release for a term of
21 one year. Supervision shall occur outside the United States.

22 While you are on supervised release, you shall not commit
23 another federal, state, or local crime; you shall comply with
24 the standard conditions that have been adopted by this Court,
25 except that the mandatory drug testing provision is suspended;

1 and you shall comply with the following additional conditions,
2 many of which you have already satisfied.

3 One, you must pay any fine, restitution, and special
4 assessment that is imposed by this judgment.

5 It is further ordered that you pay the United States a
6 special assessment of \$100.

7 Payments shall be made to the Clerk of the United States
8 District Court at an address that the Probation Office can give
9 you.

10 I further order that you pay the United States a lump sum
11 fine in the amount of \$250,000. The fine payments shall be
12 made to the Clerk of the United States District Court.

13 I further order that you shall pay restitution to the
14 Internal -- there is a typographical error, I think, in the
15 Probation report. Hold on. Shall pay restitution to the
16 Internal Revenue Service, IRS/RACS, Attention Mail Stop 6261,
17 Restitution, 333 West Pershing Avenue, Kansas City, Missouri,
18 64108, in the lump sum amount of \$ 448,957,108. The
19 restitution payments shall be made to the Clerk of the
20 United States District Court.

21 Mr. Tinkov, that concludes the imposition of the Court's
22 sentence. I want to wish you the very best of luck, and I hope
23 you prevail over these diseases.

24 Does anyone have anything further for the record this
25 morning?

1 **MS. KANE:** No, Your Honor. Thank you.

2 Oh, I'm sorry. I do. The United states dismisses the
3 remaining counts of the Indictment.

4 **THE COURT:** Thank you. The docket shall reflect that
5 dismissal.

6 Mr. Morvillo, anything further on behalf of the Defendant?

7 **MR. MORVILLO:** No, Your Honor, other than just to
8 express his gratitude again to the Court and to the Government
9 for the way this case was resolved and handled.

10 **THE COURT:** Very good. Thank you all.

11 **MR. MORVILLO:** Thank you.

12 **MS. KANE:** Thank you, Your Honor.

13 (Proceedings adjourned at 9:53 a.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, January 3, 2022

Pamela Batalo Hebel

Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR
U.S. Court Reporter